

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES HAYS, on behalf of himself) Docket No. 14 C 9786
and all others similarly situated)
shareholders of Walgreen Company,)
Plaintiff,)
vs.)
WALGREEN COMPANY, et al.,) Chicago, Illinois
Defendants.) July 8, 2015
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS AND MOTION
BEFORE THE HONORABLE JOAN B. GOTTSCHALL

APPEARANCES:

For the Plaintiff: FRIEDMAN OSTER AND TEJTEL PLLC
BY: MR. JEREMY FRIEDMAN
MR. SPENCER OSTER
240 E. 79th St., Suite A
New York, New York 10075

POMERANTZ LLP
BY: MR. MARK B. GOLDSTEIN
10 S. LaSalle St, Suite 3505
Chicago, Illinois 60603

For the Defendants: SIDLEY AUSTIN LLP
BY: MR. JAMES W. DUCAYET
MS. ELIZABETH AUSTIN
One S. Dearborn Street
Chicago, Illinois 60603

Court Reporter: MS. JOENE HANHARDT
Official Court Reporter
219 S. Dearborn Street, Suite 1744-A
Chicago, Illinois 60604
(312) 435-6874

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PROCEEDINGS RECORDED BY
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1 THE CLERK: Case No. 9: 14 C 9786, Hays vs. Walgreen
2 Company.

3 THE COURT: Good morning.

4 MR. FRIEDMAN: Good morning, your Honor.

5 MR. DUCAYET: Good morning, your Honor.

6 THE COURT REPORTER: Would you please state your names
7 for the record?

8 MR. FRIEDMAN: Good morning, your Honor, Jeremy
9 Friedman from Friedman Oster on behalf of the plaintiff in this
10 matter.

11 MR. GOLDSTEIN: Mark Goldstein on behalf of the
12 plaintiffs.

13 MR. DUCAYET: Your Honor, Jim Ducayet and Liz Austin
14 here on behalf of the defendants.

15 MR. OSTER: And Spencer Oster for the plaintiff.

16 THE COURT: Okay.

17 This is a non-monetary settlement, correct?

18 MR. FRIEDMAN: That is correct, your Honor.

19 And before I get started, let me just hand up a binder
20 with a couple few documents that I think would be helpful as we
21 go through that.

22 They have been filed, as well.

23 THE COURT: Okay.

24 (Document tendered.)

25 MR. FRIEDMAN: So, today the parties are here asking

1 the Court to do three things.

2 THE COURT: Right.

3 MR. FRIEDMAN: The first one, to preliminarily approve
4 the settlement; the second, to certify the proposed settlement
5 class; and, the third, to approve the form of notice.

6 I thought it would be helpful, because this is the
7 first time we have appeared before the Court on more of a
8 motion -- like a substantive motion -- in this case, to give a
9 brief summary of the litigation and the proposed settlement.

10 THE COURT: Sure. That would be helpful.

11 MR. FRIEDMAN: Okay. Great.

12 So, back in August of 2012, Walgreen entered into a
13 deal where it acquired half of its European competitor -- a
14 pharmacy competitor -- Alliance Boots. And in connection with
15 that deal, Walgreen received an option to acquire the remainder
16 of Alliance Boots at a later date in 2015.

17 Then fast forward to August of 2014, where Walgreen
18 publicly announced that it was accelerating its option to
19 acquire the remainder of Alliance Boots and undertaking a
20 corporate reorganization, where the company would shift its
21 state of incorporation from Illinois to Delaware.

22 And for simplicity today, I am going to refer to the
23 acquisition of the second part of Alliance Boots as the Second
24 Step Acquisition, and the corporate reorganization as the
25 Reorganization, just to kind of speed things up and make it

1 more simple.

2 The period that surrounded the announcement of this
3 deal was one of significant turmoil at Walmart. A couple of
4 days prior to that announcement, in August, the company's CFO
5 had abruptly resigned from the company and there were activist
6 investors who were agitating for change at Walmart.

7 Walgreen's former CEO didn't ride off quietly into
8 sunset. In August, he logged in a defamation complaint against
9 the company, accusing its now former CEO and the largest
10 stockholder of Alliance Boots of defaming him during a series
11 of meetings with other large Walgreen stockholders. And kind
12 of -- in short, the former CFO was alleging that the former CEO
13 and Alliance Boots' largest stockholder had said disparaging
14 things, and it was allegedly to cover up or obscure certain
15 misconduct that had been engaged in by certain directors and
16 officers of the company.

17 Despite these serious allegations from Walgreen's
18 former CFO, and the fact that Stefano Pessina, Alliance Boots'
19 largest stockholder and a director of Walgreen's, was going to
20 be getting significantly more power as a result of the Second
21 Step Acquisition of this company, the proxy statement that was
22 filed in connection with this deal, and the stockholder vote on
23 this deal, did not even mention the lawsuit or the substance of
24 it or any of the CFO's former allegations.

25 The proxy materials also failed to disclose a litany

1 of other information that we believe would have -- was material
2 to the vote and would have -- been useful for the stockholders
3 to get. This information included Mr. Pessina's expected
4 ownership stake at the completion of the deal, an explanation
5 and -- a more full explanation as to why the Step Two
6 Acquisition was accelerated, the risks associated with the
7 deal, and certain information about meetings between Walgreen
8 management and directors and activist investors, including JANA
9 Partners.

10 In early December of 2014, plaintiffs in this case
11 brought their action and it was alleging disclosure violations
12 and disclosure deficiencies in connection with the proxy
13 materials.

14 The plaintiffs in this case stood ready to file their
15 TRO motion seeking to enjoin the deal in this matter; but, at
16 the same time, the parties also began negotiations and engaged
17 in several rounds of negotiations about supplemental
18 disclosures to resolve this action.

19 After these multiple rounds of negotiations, the party
20 reached a preliminary resolution where defendants agreed to and
21 have already provided what we believe to be valuable
22 disclosures, including the existence and substance of the
23 former CFO's complaint, Mr. Pessina's expected ownership upon
24 consummation of the deal, why Mr. Pessina was selected to be
25 the CEO of the combined company, information relating to Mr.

1 Pessina's recusal during the process because of a potential
2 conflict of interest, risks associated with the Step Two deal
3 and certain meetings between Walgreen management and the
4 activist investors, including JANA.

5 In sum, we think these supplemental disclosures
6 provided value to the stockholders and allowed them to cast an
7 informed vote on the deal.

8 For the Court's convenience, I handed up a binder at
9 the outset that includes an AK as, I believe, Exhibit 1, that
10 includes the supplemental disclosures that I summarized.

11 I don't want to kind of read from them wholesale. So,
12 I figured it would be helpful to hand that up.

13 THE COURT: So, do I need to read these? I have read
14 all of the materials that you filed.

15 MR. FRIEDMAN: No. There they are summarized in all
16 all of the filings.

17 THE COURT: Okay.

18 MR. FRIEDMAN: But just to make sure you had them, I
19 handed this up, just to --

20 THE COURT: Sure.

21 MR. FRIEDMAN: So, the first issue that we are asking
22 the Court to address is whether to preliminarily approve the
23 settlement. And as the Court knows from the Federal Rules of
24 Civil Procedure, the standard for final approval of a
25 settlement is fair, reasonable and adequate. And we believe

1 the settlement meets that standard.

2 But here, today, the Court doesn't even need to get
3 there. The question for preliminary approval is whether the
4 settlement is within the range of possible approval.

5 In light of the fact that the proposed settlement, we
6 believe, meets the higher standard of fair, reasonable and
7 adequate, so almost by definition it would meet the lower
8 standard, within the possible range.

9 And to kind of summarize why we think it is within the
10 range, here plaintiffs brought rifle-shot claims. We weren't
11 alleging that the deal itself was unfair or that Walgreen was
12 overpaying to acquire Alliance Boots. It was merely that there
13 were disclosure deficiencies in the proxy materials and those
14 were depriving stockholders of an informed vote.

15 Unless your Honor has any questions on preliminary
16 approval, I would move on to class cert.

17 THE COURT: Yes. How much time do you think you
18 are going to need? I am actually squeezed a little bit this
19 morning.

20 MR. FRIEDMAN: Oh, yes. I would say three minutes.

21 THE COURT: Go ahead.

22 MR. FRIEDMAN: I mean, I can -- unless your Honor has
23 any -- if you have already read the materials --

24 THE COURT: I have actually read everything.

25 MR. FRIEDMAN: Okay.

1 THE COURT: And I am, like, ready. Okay?

2 MR. FRIEDMAN: Okay.

3 THE COURT: I have read everything that you filed.

4 I certainly have not read what you handed up to me
5 this morning.

6 My only concern really -- I have a couple of modest
7 concerns.

8 First of all, as usual, Redmond vs. Radio Shack in
9 this Circuit gives me some issue. And let me quote from the
10 decision.

11 Judge Posner says, "Analysis is more complex," and we
12 are talking about -- we are looking at trying to assess the
13 value of the attorneys' fees against the value of the
14 settlement. Okay? And he says, "Analysis is more complex.
15 When the principal benefits are non-monetary is when equitable
16 relief is awarded rather than damages. A value must be
17 attached to the relief obtained by the class as part of a
18 determination of an appropriate attorneys' fee for class
19 counsel. But a rough estimate may be permissible, especially
20 when, as in civil cases, much of the value of the equitable
21 relief may be non-monetizable."

22 So, here is what I think. I think that the question
23 of the amount of attorneys' fees you are requesting, I think
24 they are quite -- given what I see in most cases, quite --
25 modest. Okay?

1 The only thing about the attorneys' fees -- somehow
2 you want us to come up with some number for this relief. And I
3 am not sure in this case it even makes sense to try to do it.
4 I think given the rather reasonable amount of attorneys' fees,
5 maybe we can dispense with that.

6 I do not know. If anybody appeals, we will find out.

7 But they would have to object, I guess. And I cannot
8 foresee any objections. I just do not see how we would do it
9 in this case.

10 The only other thing that I am concerned about is some
11 language Redmond that suggests that before the objection date,
12 we have to give the class enough information about fees, so
13 that they can actually make a meaningful objection to the
14 amount of fees. And I think in this case, they have to
15 probably -- they would have to have some idea of how much each
16 law firm or each lawyer was billing.

17 I think you have given me --

18 MR. FRIEDMAN: Yes.

19 THE COURT: You have given me a pretty good sense of
20 -- I like the way you have divided it down into types of work.

21 Let me ask you one question, though.

22 MR. FRIEDMAN: Sure.

23 THE COURT: The New York firm billing rates appear to
24 me to be quite -- because I have not been in practice for a
25 long time, but I think they are a lot more significant than

1 what Chicago lawyers normally charge. Am I --

2 MR. FRIEDMAN: Yes, I think that -- I don't have the
3 rates right in front of me, but I think that is a fair
4 statement.

5 THE COURT: My guess is, if this is what --
6 Who is a New York lawyer here?

7 MR. FRIEDMAN: I am a New York lawyer.

8 THE COURT: Do you actually ever bill these amounts or
9 do you do so much class action work, that it is just a --

10 MR. FRIEDMAN: Personally, I -- my practice is all
11 class actions.

12 THE COURT: How do I make sure that that is a
13 reasonable billing rate? Because I think that is one of the
14 things that the Seventh Circuit is a little bit obsessive
15 about.

16 MR. FRIEDMAN: I can look to see what is comparable --
17 I mean, my defense counsel probably wouldn't like this; but, I
18 mean, I think they are comparable with what our adversaries in
19 the case are charging, and I think comparable with what the
20 market is for --

21 THE COURT: Okay. I may need something like that down
22 the road. I do not know that I need it now.

23 MR. FRIEDMAN: Okay.

24 THE COURT: But other than that, everything looks okay
25 to me.

1 MR. FRIEDMAN: Okay.

2 THE COURT: And, as I say, I do not really understand
3 how I would -- yes?

4 MR. DUCAYET: Your Honor, there is just one part of
5 the notice program that I wanted to draw your attention to.

6 THE COURT: Yes.

7 MR. DUCAYET: Just to make sure that --

8 THE COURT: And that is attached to this somewhere,
9 right?

10 Let me get the notice in front of me before --

11 MR. FRIEDMAN: Yes. The notice is also in the small
12 binder, if you just want to check it.

13 THE COURT: Oh, the notice is in the small binder?

14 MR. FRIEDMAN: Well, it is included in the filings;
15 but, also, for your convenience, it is either Exhibit No. 2 or
16 Exhibit 3.

17 THE COURT: Well, let me try to find it. Okay?
18 Because I know I looked at it.

19 There were two notices attached, right?

20 MR. DUCAYET: There are, your Honor. And that is why
21 I wanted to draw your attention to this --

22 THE COURT: Please.

23 MR. DUCAYET: -- just to make sure we are all on the
24 same page here.

25 THE COURT: Please.

1 MR. DUCAYET: We are proposing, with the agreement of
2 plaintiffs, to do a postcard notice in the first instance. And
3 we believe under the circumstances, given the nature of the
4 relief here, that that is appropriate.

5 We have got a lot of shareholders; and, frankly, the
6 cost of delivering a long form notice to --

7 THE COURT: Right.

8 MR. DUCAYET: -- nearly have a million, you know,
9 shareholders, would be quite expensive.

10 THE COURT: Right.

11 MR. DUCAYET: And, so, what we have proposed to do is
12 to have a postcard that contains all of the salient
13 information; includes a link to a Web site that will
14 conclude -- include -- that long form notice.

15 THE COURT: Right.

16 MR. DUCAYET: But, you know, I know your Honor has
17 dealt with postcard notices before and I just wanted to raise
18 that now, just to make sure your Honor was aware of that.

19 THE COURT: I think in the context of this case, it
20 probably makes a lot of sense, as long as the postcard -- where
21 is the postcard notice?

22 MR. DUCAYET: So, the -- well, so, the postcard is
23 described as the summary notice.

24 THE COURT: So --

25 MR. DUCAYET: And what is on there, it is not in the

1 form of a postcard, but it will formatted so that it --

2 THE COURT: Right. But does it have a number? I
3 mean, I have some exhibit numbers here.

4 MR. GOLDSTEIN: In the small binder, I believe it is
5 No. 2.

6 THE COURT: In the small binder?

7 MR. GOLDSTEIN: Yes.

8 It also was filed and I just -- that was for your
9 reference.

10 MR. FRIEDMAN: That exhibit will have the text. It
11 should be two pages. It will have the text of what will appear
12 on the postcard.

13 THE COURT: Wait. It is this thing (indicating)? You
14 are going to put that on a postcard?

15 MR. FRIEDMAN: Yes, I would be condensed, but --

16 THE COURT: Will it be readable?

17 MR. DUCAYET: Your Honor, we will make sure it is
18 readable, yes.

19 THE COURT: I do not know how all of this goes on a
20 postcard.

21 MR. FRIEDMAN: It's a big postcard.

22 No, we will make sure that it is very legible.

23 THE COURT: Okay.

24 These -- this is two pages of text?

25 MR. DUCAYET: Yes, your Honor.

1 THE COURT: And it is going to go on a postcard and it
2 is going to be readable?

3 MR. DUCAYET: Yes, your Honor. We are working with
4 our notice administrator --

5 THE COURT: Okay.

6 MR. DUCAYET: -- to create a form that includes that
7 information. We will do it in a way that it is legible, it is
8 understandable and that it will be clear that you can link to a
9 Web site.

10 THE COURT: And there is no problem -- there is no
11 problem -- getting names and addresses in this case, right?

12 MR. DUCAYET: No, that is not the issue, your Honor.

13 Well, with one exception, your Honor. We have a
14 shareholder list. Many shareholders hold through banks and
15 brokers.

16 THE COURT: Right.

17 MR. DUCAYET: And, so, we are going to make it in
18 notice to them and, then, ask them to identify their beneficial
19 owners.

20 But with that exception, your Honor, there is no issue
21 about the identity of the shareholders.

22 THE COURT: Okay.

23 MR. DUCAYET: It is just a number.

24 THE COURT: All right.

25 So, the postcard notice, if it is on a postcard, I do

1 not see a problem with that as long as it is legible.

2 MR. DUCAYET: Right.

3 THE COURT: And, then, what is attached as Exhibit 3
4 is the regular form notice?

5 MR. DUCAYET: Yes, your Honor.

6 THE COURT: It is going to go on the Web site?

7 MR. DUCAYET: Correct.

8 THE COURT: Okay.

9 And that I have read and that looks okay.

10 So, what I am doing today is if I preliminarily
11 approve the class action settlement and class certification, I
12 am also certifying the class, which looks okay; I am approving
13 both the postcard notice and the notice that is going to be
14 posted on the Web site.

15 MR. DUCAYET: Right.

16 THE COURT: And I think that is okay, as long as the
17 postcard is legible.

18 And am I doing anything else?

19 MR. DUCAYET: And, then, your Honor, we would be
20 asking for you to set a date for a final fairness hearing.

21 THE COURT: Yes. Okay.

22 So, I will grant this motion for preliminary approval.

23 And what kind of a date do you need?

24 MR. DUCAYET: So, your Honor, because we have got
25 notification obligations under CAFA, we need at least 90 days

1 from the date that that CAFA notice goes out. We are going to
2 try to get that out notice today.

3 THE COURT: Okay.

4 MR. DUCAYET: Could we build in a little bit of a
5 buffer, you know, and get us 90 days from, say, sometime next
6 week? You know, that should --

7 THE COURT: So, we are looking for a date, what, in
8 early November? Is that what you are thinking of?

9 MS. AUSTIN: Yes, October 8th would be 90 days from
10 this Friday.

11 THE CLERK: October the 7th is 90 days.

12 MR. DUCAYET: Yes, why don't we build in a hundred
13 days, your Honor, just to give us enough time to get that
14 notice out.

15 THE COURT: So, mid-October?

16 MR. DUCAYET: Mid-October would be good.

17 THE COURT: Okay.

18 THE CLERK: November 6th.

19 MR. DUCAYET: November 6th is fine.

20 MR. FRIEDMAN: That should work.

21 THE COURT: Okay.

22 November?

23 THE CLERK: Yes, November 6th.

24 THE COURT: Do you want October or do you want
25 November?

1 MR. DUCAYET: November 6th is fine, your Honor.

2 THE COURT: Okay.

3 And is there anything else we need to do today?

4 MR. FRIEDMAN: That is all.

5 MR. DUCAYET: No, your Honor.

6 THE COURT: Okay.

7 I will grant the motion for preliminary approval and I
8 will see you in early November.

9 MR. DUCAYET: Thanks very much for your patience
10 today.

11 MR. FRIEDMAN: Thank you, your Honor.

12 MR. GOLDSTEIN: Thank you.

13 THE COURT: Thank you.

14 * * * * *

15 I certify that the foregoing is a correct transcript from the
16 record of proceedings in the above-entitled matter.

17 /s/ Joene Hanhardt
18 Official Court Reporter

November 18, 2015

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